

**I AM AN ARIZONA CERTIFIED LEGAL DOCUMENT PREPARER.
I ENGAGE IN THE PRACTICE OF LAW.**

I prepare legal documents on behalf of the public without attorney supervision IN ANY LEGAL MATTER. I prepare or provide legal documents, without the supervision of an attorney, for a person or entity in any legal matter when that person or entity is not represented by an attorney.

I provide general factual information pertaining to legal rights, procedures, or options available to a person or entity in a legal matter when that person or entity is not represented by an attorney.

Yes, I unabashedly engage in the practice of law. I am authorized to do so as a special exemption to A.R.S. Sup.Ct.Rules, Rule 31 which governs the practice of law and the unauthorized practice of law in this state. Section (d)(24) states that "Nothing in these rules shall prohibit a certified legal document preparer from performing services in compliance with Arizona Code of Judicial Administration, Part 7, Chapter 2, Section 7-208."

Section 7-208 of the Arizona Code of Judicial Administration provides this definition of a legal document preparer: "'Legal document preparer' means an individual or business entity certified pursuant to this section to prepare or provide legal documents, without the supervision of an attorney, for an entity or a member of the public who is engaging in self representation in any legal matter. An individual or business entity whose assistance consists merely of secretarial or receptionist services is not a legal document preparer."

Yet this proposed change to ACJA § 7-208 will EMASCULATE the legal document program and profession in Arizona by reducing the Certified Legal Document Preparers ("CLDP's") to be "secretaries" or "mere scriveners" who fill in very basic, general facts into forms. The public is already being served by the Self-Service Centers of the Court with their fill-in-the-blank forms, but the public has a much greater need for access to legal services than form-filling.

I would even go further to argue that it is a necessary part of the job of a legal document preparer to cite legal authorities and make compelling arguments. It was the intent of the CLDP program from the beginning that we were to be able to prepare legal documents IN ANY LEGAL MATTER. Chief Justice Charles E. Jones made this clear in his Administrative Order No. 2003-14 dated January 16, 2003 (which is available for view at <http://www.azcourts.gov/Portals/26/LDP/Docs/LDPAO200314.pdf>) Our CLDP Code, the ACJA § 7-208, states twice within the code that we may prepare documents IN ANY LEGAL MATTER as well.

The only caveat to this is that the code warns that: "A legal document preparer shall accept only those assignments for which the legal document preparer's level of competence will result in the preparation of an accurate document. The legal document preparer shall decline an assignment when the legal document preparer's abilities are inadequate for that assignment." However, this is similar to the ethical admonition to attorneys.

The roster of CLDP's is quite varied. We have document preparers who have very limited knowledge or experience and they have become certified so that they might prepare a very specialized set of documents, such as the CLDP's who do only mechanic's liens. We have other CLDP's who are attorneys of other states who choose not to be admitted to the bar in this state. We have CLDP's who are in law school or have graduated from law school but are not yet admitted to the bar, for whatever reason. If these CLDP's adhere to the parameters of our existing code, they should all prepare documents IN ANY LEGAL MATTER, whether it is simple or complex. The CLDP is limited to taking assignments commensurate with his or her abilities.

This includes the citing of legal authorities and making compelling arguments. I would argue that it is incumbent upon a legal document preparer to cite legal authorities when preparing quality documents. To secure legal rights on behalf of a client in a document or pleading, it is necessary to cite to a rule or statute. A legal document preparer must have a certain amount of education or professional experience to qualify for certification. Likewise, since 2003, a CLDP must take ten hours of continuing education each year. I question why would the education even be necessary if the CLDP is reduced to a mere scrivener as these proposed rule changes threaten?

Indeed, if my client prevails in litigation in the Superior Court, A.R.S. § 12-341.02 provides that he or she may request reimbursement of the legal document preparation fees expended in the action. It is necessary to cite to that statute to request the relief. Why would a document preparer be such an imbecile that he or she cannot comprehend the contents of that statute and cite to it in a request to the court? In fact, I wrote that language for the bill for that statute myself, so I know what it says. So, what is the "harm to the public" for me (or others) to cite to a statute such as this in a pleading? The issue is complexity and competency, which must be gauged by the preparer as our Code prescribes.

The question is whether the CLDP will capably cite legal authorities or whether the CLDP will competently take the client's issues and facts and put them in a proper type of pleading and legal framework. The public has a great need for document preparers to do just this at a price they can afford, and I would argue that the great need of the public far outweighs any damage actually being done by CLDP's. The CLDP Board should focus on ACTUAL HARM to the public on a case by case basis instead of taking a broadsword and gutting the program. In fact, I wager that CLDP's are more often complained of by turf-protecting attorneys than by the public than actually harmed by the public.

Chief Justice Charles E. Jones and the *ad hoc* committee who promulgated the initial code fully intended for CLDP's to be able to prepare legal documents IN ANY LEGAL MATTER and intended to include motion practice and other complex documents. Chief Justice Jones' initial Administrative Order in 2003 stated, "The Court recognizes the need to protect the public from possible harm caused by non-lawyers providing legal services must be balanced against the public's need for access to legal services." The public's need for access to legal services is overwhelming and is not being met now, and these proposed changes will have a DEVASTATING effect upon the citizens of this state.

What those advocating for these changes are not seeing—or choosing not to see—is that it is necessary for a CLDP to practice law, including the citing of legal authorities or making compelling arguments. It is the job of the CLDP to develop these substantive legal statements or arguments based upon the

information provided by the client. If the client could research the law and develop the strategy and content on his to provide all of it to the CLDP, then he or she would likely only need a secretary or scrivener. "Here's 20 bucks, will you type it up for me?" While we certainly look to the client for as much as they can provide us, sometimes we must probe and allow them to convey the facts and circumstances of their matter. We ask additional questions until they can articulate what they want us to do, or they obtain a legal opinion from an attorney. We don't advise the client what to do, but we do take what they tell us to do and put it in a legal framework for them.

If a client wants a motion to appear telephonically at a hearing, I must know (or research) the rules of procedure regarding such a request. The document must conform to the rule and cite to the rule which states how many days in advance of a hearing, etc. If the client gives his or her reasons for the request, it is important to have good writing skills to make a persuasive, compelling argument. It may be a simple motion, but it can mean everything to a client who is unable to attend a hearing in person me as a CLDP to prepare a document that articulates the facts and legal authorities in a manner that will persuade the judge. It is the job of the CLDP to research that rule and create a legal argument out of the client's fact pattern that will assist him or her to secure certain legal rights in the proceeding.

The proposed rule change would permit the CLDP to research generally, to understand legal theory and general legal arguments generally, but not specifically for a certain client. Again, this is a marked departure from the intentions of those who initially worked on bringing this program into being. Breaking this down, it seems that it's ok for a CLDP to research and memorize all the rules, for example. But, it's not permitted for the CLDP to quickly look up the rule (such as Rule 8 of the rules governing family law in the aforementioned example).

Perusal of the CLDP Examination Study Guide will, at a glance, will support my statements about what the code has always enabled us to do, and what those that sat on the Arizona Supreme Court *ad hoc* committee intended for us to be able to do. Here is some background information from our Study Guide:

"The content for the examination was developed through an occupational analysis survey of legal document preparers conducted during October of 2004. The survey questionnaire was based on information obtained from interviews and focus groups involving active certificate holders. The survey questionnaire was made available to all individual initial certificate holders. Certificate holders were asked to provide demographic information about themselves and the services they provide, indicate how frequently they performed various tasks, and how important certain knowledge/abilities were in performing these tasks. The resulting data was analyzed and evaluated by focus groups comprised of active certificate holders to identify the tasks that are performed by entry-level document preparers and the knowledge/abilities required to perform these tasks. Only those tasks and knowledge/abilities that were determined to be important to entry-level practice were included in the content specifications."

There are seven content areas in the CLDP Examination outlined in the content specifications:

I. Legal Terminology (7%) - Understand the meaning and applicability of general legal terms such as terms used in estate planning, probate, domestic relations, bankruptcy, business formation, tax matters, immigration and naturalization, and civil matters, etc.

II. Client Communication (9%) – Provide general factual information regarding legal rights, procedures or options.

III. Administrative Responsibilities (7%) – Apply the administrative orders, ACJA § 7-208 and Rules of Court pertaining to professional responsibilities of certificate holders.

IV. Data Gathering (10%) – Obtain required information necessary and relevant to prepare legal documents.

V. Document Preparation (20%) – Complete, file, submit, or record legal documents according to codes, laws, rules, court orders, and policies.

VI. Ethical Issues (8%) – Resolve ethical dilemmas according to ACJA § 7-208, laws, rules, or court orders.

VII. Professional Responsibilities (39%) – Comply with ACJA § 7-208, laws, rules, or court orders to maintain professional conduct and protection of the public.

I believe that the CLDP Board has set up a contradictory framework for CLDP's. The administrators of the program and Board have encouraged and tested CLDP's in certain areas and then have later charged with code violations to discipline them for the doing what they were told they could do from the outset, such as give general factual legal information and options to clients.

The Study Guide demonstrates that part of a CLDP's communication with a client is to provide general factual information regarding legal rights, procedures or options. A CLDP must gather data and obtain required information necessary and relevant to prepare legal documents. A CLDP must complete, file, submit or record legal documents ACCORING TO CODES, LAWS, RULES, COURT ORDERS, AND POLICIES. However, whomever is behind this rule change seeks to completely impede the CLDP from being able to do his or her job in the manner it was intended from the beginning of the program.

In addition to the fact that the program administrators and CLDP have for many years been disciplining members for things that are not violations of our actual code, Rule 31 inconsistently and unevenly applies the law amongst practitioners. For example, CLDP's do not represent clients in court. However, exemptions to the Unauthorized Practice of Law provision of Supreme Court rule 31 allow certified public accountants to represent clients in tax court. Perhaps that is because they have more education? Really?

Well, another exemption in Rule 31 is that an active member or full-time employee of an association defined in A.R.S. §§ 33-1202 or 33-1802, or the officers and employees of a management company providing management services to the association, from appearing in a small claims action. While CLDP's are not necessarily desirous of representing clients before a tribunal, it is evident that the Supreme Court unequally applies the law. A CLDP must meet certain eligibility requirements to become certified, including educational, experiential and moral fitness, but the Arizona Supreme Court is not likewise concerned about Joe Schmoe out there who is likely untrained in law and is outright representing the interests of management companies and homeowner associations.

Further, Rule 31 does not permit a single member of an LLC (or other company) to represent his company in the Superior Court even though he or she is not affecting the rights of any other member or shareholder. Other Rule 31 exemptions include provisions for inactive members of the State Bar, corporate officers of an ambulance company, and many corporate officers and public officials in various legal proceedings in government agencies, etc.

Rule 31 contains several exemptions for CPA's, including exemption no 17, which states: "Nothing in these rules shall prohibit the rendering of individual and corporate financial and TAX ADVICE to clients or the preparation of tax-related documents for filing with governmental agencies by a certified public accountant or other federally authorized tax practitioner as that term is defined in A.R.S. § 42-2069(D)(1). It is also interesting to note that the licensing framework for CPA's is regulated by the ARIZONA REVISED STATUTES and NOT by the Arizona Supreme Court which governs the practice of law. How did they get away with this? Even tax preparers get a pass in Rule 31 without constraints such as CLDP's have upon them. Seems that others have a free reign to give legal advice without any type of restraint such as legal document preparers.

Let's not forget that real estate agents are another example where a lay person may practice law without being an attorney. I don't believe that they are on the Rule 31 exemption list, and they handle high dollar transactions, often in the millions. Title companies and escrow companies have been preparing deeds and contracts for decades. Estate planners and banks have done wills and trusts without oversight for many years, and some likely still do.

CLDP's are the red headed step children of the legal profession in Arizona. However, they typically charge very little and assist the public tremendously. I have seen many occasions, regrettably, where clients have been charged obscene amounts of money by an attorney for little produced. The attorney dumps the client after the client has run out of cash, and the client is left in a terrible predicament. It is the CLDP who works for very little remuneration and assists this member of the public that would be without access to the legal system. The public is very aware of the damage that attorneys do and that CLDP's are the ones saving them most of the time. CLDP's are appreciated and esteemed by the public.

I know a many of our CLDP's personally and I admire them. Most are kind, ethical and extremely proficient at what they do. They care about their clients and the State of Arizona. If the administration succeeds in gutting our profession via these proposed changes, our entire state will be grossly affected in a negative manner. There will be much damage and loss in the lives of Arizonans.

This change is not motivated by wanting to HELP and protect the people of Arizona, but is at its core TURF PROTECTION. I have heard the phrase "citing legal authorities and making compelling legal arguments" batted about as far back as a decade ago when Linda Grau was the program director. Someone was feeding this to her and the program administrators as a perceived "no-no" even though this has NEVER been in our code. Someone has had an agenda for a very long time, longer than Mark Wilson and Hal White have been there. So, I do not attribute this agendist proposal and code change to any of the present administrators or Linda Grau. This has been hanging around for a long time and someone just decided that now was the time to make a move.

There are always unintended consequences to such actions, and I do believe that there will be a public outcry if this change is successful and the CLDP rights are curtailed. The public wants us. The public needs us. It is time to act in the best interests of the public and serve them.

“Nothing in these rules shall affect the rights granted in the Arizona or United States Constitutions.”
Sup.Ct.Rules, Rule 31(d)(22).

Sincerely,

Cherie Koch, AZCLDP #80221